



Department of Education
Special Education Programs
700 Governors Drive
Pierre, South Dakota 57501
605/773-3678 FAX: 605/773-3782
www.state.sd.us/deca/Special

Memorandum

TO: Superintendents Higher Education Programs
Special Education Directors State Schools
Educational Cooperatives Educational Service Agencies
SD Parent Connection SD Advocacy Services
SD Advisory Panel for Children with Disabilities

FROM: Michelle Powers
Director of Special Education

DATE: December 15, 2004

RE: Reauthorization of the Individuals with Disabilities Education Improvement Act of 2004

On December 3rd, 2004, President Bush signed H.R. 1350, now known as the Individuals with Disabilities Education Improvement Act of 2004, into law. With this act, the reauthorization of federal special education law has been completed. The work begins now to learn about the changes and improvements made in this new law and what it will mean for South Dakota, local school districts, students in need of special education and their families.

There are several main themes found within the IDEA 2004. They are:

- Protecting the civil right of students with disabilities to a free appropriate public education
- Making the IDEA work for students, parents, teachers, school administrators, and school districts
- Providing quality services and instruction at all stages, from early childhood through graduation from high school
- Improving discipline and ensuring safety
- Integrating of the Individuals with Disabilities Education Act with the Elementary and Secondary Education Act

Attached to this memorandum is a summary of the major provisions of the act. Please note it provides just a brief synopsis of the federal changes; some may impact the state more than others. Also included is the bill language which addresses highly qualified special education teachers. Overall, the new law becomes effective as of July 1, 2005, **with the exception of the**

provisions addressing highly qualified special education teachers. These requirements are in effect immediately.

The next step in this process will be to await the receipt of implementing regulations from the U.S. Department of Education. At this time, no information is available regarding when implementing regulations can be expected. Once implementing regulations are final, the department will begin the process of revising the Administrative Rules of South Dakota (ARSD), Article 24:05, to align them with the changes in the law. After completion of rule revision, Special Education Programs will assist school districts in the updating and revision of comprehensive plans for special education. This process is certain to be labor intensive, but please be assured that the department will work closely and providing information on a frequent basis to keep all school districts informed of the status of changes.

In addition to the regulatory work that must occur, Special Education Programs will provide information-sharing sessions, trainings and technical assistance documents, designed to assist school districts in implementing the changes of IDEA, 2004. The first activity will be a series of informational sessions regarding IDEA 2004. Dates and locations for informational sessions have not yet been determined. Watch your mail, email and the Administrative Memorandum for announcements in February, 2005 of the first informational sessions.

Changes in the federal law provide the state and local school districts with an opportunity to continue to improve and ensure the provision of quality educational programs for students with disabilities. I look forward to working with each of you on this new challenge.

Attachment: IDEA Summary of Major Provisions

Protects the civil right of students with disabilities to a free appropriate public education

- Vigorously enforces provisions by giving the U.S. Secretary of Education and state education agencies greater power and new tools to measure compliance and impose sanctions when schools fail to meet standards.
- Requires states to develop a plan, establish targets and meet them in the delivery of a free appropriate public education, general supervision, transition services, and disproportionate representation of minorities.
- Makes agreements in dispute resolution and due process binding.
- Establishes competency standards for the training of hearing officers.

Makes IDEA work for students, parents, teachers, school administrators, and school districts

- Provides new opportunities for parents and schools to address concerns before the need for a due process hearing and encourages parents and schools to resolve differences by clarifying that mediation is available at any time.
- Provides greater flexibility for parents and schools by allowing them to agree to make minor changes to a child's IEP during the school year without reconvening the IEP team, and encouraging the consolidation of IEP and reevaluation meetings.
- Increases parental involvement in IEP meetings by allowing the use of teleconferencing, video conferencing, and other alternative means of participation.
- Provides increased resources to assist parents with complaint resolution and due process through Parent Training Institutes.
- Requires that initial evaluations occur within 60 days of referral unless the state has a policy that establishes a timeline for evaluation.
- Encourages Parent Training Institutes to focus on improving parent-school collaboration and early, effective dispute resolution.
- Enhances the preparation, professional development, and support for special educators and other school personnel working with students with disabilities to ensure that these educators possess the necessary skills and knowledge to provide instruction to students, including a new grant program for institutions of higher education focused exclusively on training beginning special educators.

Provides quality services and instruction at all stages, from early childhood through graduation from high school

- Maintains early intervention and preschool special education programs for infants, toddlers, and preschoolers with disabilities, including allowing states to create a system that gives parents the choice to have their child continue early intervention services until the age of five.
- Requires that infants and toddlers who are abused, neglected, drug-exposed, or have experienced family violence, be referred for early intervention.
- Allows for the development of new approaches to determine whether students have specific learning disabilities by clarifying that schools are not limited to using the IQ-achievement discrepancy model.

- Authorizes local educational agencies to use up to 15% of IDEA funds to develop a comprehensive educational support system for students without disabilities in grades K-12 who require additional academic and behavioral supports to succeed in a general education environment.
- Establishes an option for a state-level risk pool fund to assist local educational agencies in providing a free appropriate public education (FAPE) to high-need children.
- Requires schools to provide short-term objectives for students with significant disabilities, and for all students, quarterly reports to parents on their child's progress toward meeting annual IEP goals and how that progress is being measured.
- Emphasizes academic achievement and functional performance within a child's individualized education program (IEP).
- Simplifies the rules for transition services (activities that help a student begin planning for life after high school) by requiring that substantive transition services and planning begin at age 16.
- Provides for the establishment of a National Instructional Materials Access Center, to provide schools with a one-stop provider of textbooks or other materials for students who are blind or with other disabilities.
- Strengthens the involvement of the State vocational rehabilitation system with disabled students who are still in secondary school.
- Outlines requirements for special education teachers to meet the highly qualified teacher requirements in the No Child Left Behind Act.
- Improves outreach and services to homeless, foster care and other youth by clarifying state child find responsibilities, simplifying parent or guardian involvement and improving coordination between schools.

Improves Discipline and Ensures Safety

- Improves current discipline provisions by simplifying the framework for schools to administer the law, while ensuring the rights and the safety of all children.
- Requires schools to determine if a child's behavior was the result of their disability or poor implementation of their IEP when considering a disciplinary action.
- Requires that schools conduct functional behavioral assessments and give behavioral services to students who are disciplined beyond 10 days, in order to prevent future behavior problems.
- Requires that schools continue providing services that enable students who are disciplined to participate in the general curriculum and meet their IEP goals.
- Establishes a new program to develop and enhance behavioral supports in schools while improving the quality of interim alternative education settings.

Integrates the Individuals with Disabilities Education Act with the Elementary and Secondary Education Act

- Provides for a national study of valid and reliable alternate assessment systems and how alternate assessments align with state content standards.

- Ensures that local educational agencies measure the performance of students with disabilities on State or district-wide assessments, including alternate assessments aligned to the State's academic content standards or extended standards.
- Clarifies the IEP team's role in determining whether a child with a disability should take regular assessments with or without accommodations, or alternate assessments, consistent with State standards governing such determinations.
- Aligns the personnel preparation and personnel certification with No Child Left Behind.

Provided below is the language for highly qualified special education teacher taken directly from the signed bill:

Sec.602- Definitions – Highly Qualified Special Education Teachers

(10) HIGHLY QUALIFIED-

(A) IN GENERAL- For any special education teacher, the term 'highly qualified' has the meaning given the term in section 9101 of the Elementary and Secondary Education Act of 1965, except that such term also--

- (i) includes the requirements described in subparagraph (B); and
- (ii) includes the option for teachers to meet the requirements of section 9101 of such Act by meeting the requirements of subparagraph (C) or (D).

(B) REQUIREMENTS FOR SPECIAL EDUCATION TEACHERS- When used with respect to any public elementary school or secondary school special education teacher teaching in a State, such term means that--

- (i) the teacher has obtained full State certification as a special education teacher (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law;
- (ii) the teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
- (iii) the teacher holds at least a bachelor's degree.

(C) SPECIAL EDUCATION TEACHERS TEACHING TO ALTERNATE ACHIEVEMENT STANDARDS- When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under the regulations promulgated under section 1111(b)(1) of the Elementary and Secondary Education Act of 1965, such term means the teacher, whether new or not new to the profession, may either--

- (i) meet the applicable requirements of section 9101 of such Act for any elementary, middle, or secondary school teacher who is new or not new to the profession; or
- (ii) meet the requirements of subparagraph (B) or (C) of section 9101(23) of such Act as applied to an elementary school teacher, or, in

the case of instruction above the elementary level, has subject matter knowledge appropriate to the level of instruction being provided, as determined by the State, needed to effectively teach to those standards.

(D) SPECIAL EDUCATION TEACHERS TEACHING MULTIPLE SUBJECTS- When used with respect to a special education teacher who teaches 2 or more core academic subjects exclusively to children with disabilities, such term means that the teacher may either--

- (i) meet the applicable requirements of section 9101 of the Elementary and Secondary Education Act of 1965 for any elementary, middle, or secondary school teacher who is new or not new to the profession;
- (ii) in the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects; or
- (iii) in the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under section 9101(23)(C)(ii) of such Act, which may include a single, high objective uniform State standard of evaluation covering multiple subjects, not later than 2 years after the date of employment.

(E) RULE OF CONSTRUCTION- Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this section or part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular State educational agency or local educational agency employee to be highly qualified.

(F) DEFINITION FOR PURPOSES OF THE ESEA- A teacher who is highly qualified under this paragraph shall be considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965.